

Message Text

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TO SECSTATE WASHDC PRIORITY 8792
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY THE HAGUE
USMISSION USBERLIN
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C O N F I D E N T I A L SECTION 01 OF 04 BONN 09434

E.O. 11652: GDS
TAGS: PGOV, BQG
SUBJECT: STOBBE PRESIDENCY OF THE BUNDESRAT

REFS: (A) BONN 5555
(B) STATE 38283
(C) 77 BONN 19325 AND PREVIOUS
(D) 76 BONN 12111
(E) 77 BONN 12830

BEGIN SUMMARY: THE QUESTION OF STOBBE'S ASSUMPTION
OF THE BUNDESRAT PRESIDENCY, WHICH IS ON THE AGENDA FOR
THE SENIOR LEVEL MEETING, HAS BEEN DISCUSSED BY THE
BONN GROUP SEVERAL TIMES DURING THE PAST SEVERAL WEEKS.
THE BONN GROUP CONSENSUS IS THAT GUIDELINES SET BY THE
FRG FOR THE WAY IN WHICH STOBBE WILL EXERCISE HIS NEW
OFFICE PROVIDES AT LEAST A MINIMUM BASIS FOR AVOIDING
UNNECESSARY PROBLEMS WITH THE SOVIETS OVER THIS MATTER.
END SUMMARY.

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1. AT THE MAY 10 BONN GROUP MEETING, THE FRG REP (VON
BRAUNMUEHL) RAISED THE SUBJECT OF THE ASSUMPTION BY
BERLIN GOVERNING MAYOR STOBBE OF THE BUNDESRAT
PRESIDENCY. HE REFERRED TO PAPERS THE FRG HAD
PREVIOUSLY CIRCULATED IN THE BONN GROUP ON THE
SUBJECT; (POUCHED TO EUR/CE AND USBER ON MARCH 21 AND

APRIL 11; INFORMAL TRANSLATION BEING TRANSMITTED
SEPTEL.) THESE PAPERS DESCRIBED HOW ACTING FRG
PRESIDENTS AND THE BUNDESRAT PRESIDENT HAVE PERFORMED
SOME OF THEIR FUNCTIONS IN THE PAST AND DESCRIBED
GUIDELINES WHICH STOBBE WOULD FOLLOW IN HIS NEW OFFICE.
HE SAID THERE HAD BEEN NO THOROUGH ALLIED CONSIDERATION
OF THE PAPERS AND ASKED WHETHER THE BONN GROUP COULD
AGREE THAT THE PROPOSED GUIDELINES WERE ADEQUATE.

2. VON BRAUNMUEHL STRESSED THAT, FOR THE FRG THIS WAS
A MATTER OF SOME SENSITIVITY, NOT ONLY POLITICALLY BUT
LEGALLY AS WELL. IF STOBBE WERE TO BE PERCEIVED AS
UNABLE TO CARRY OUT ALL OF THE FUNCTIONS OF A BUNDESRAT
PRESIDENT, THE QUESTION MIGHT BE RAISED AS TO WHETHER
HE REMAINED ELIGIBLE TO ASSUME OR EXERCISE THE
BUNDESRAT PRESIDENCY. IT WAS A CONSTITUTIONAL ISSUE
WHICH, IF RAISED, COULD GO ALL THE WAY TO THE FEDERAL
CONSTITUTIONAL COURT.

3. IN THE FRG'S VIEW, HE SAID, THE TWO ROLES COULD
EASILY BE RECONCILED IF MAYOR STOBBE ADHERED TO A
VOLUNTARY RESTRAINT WHICH FOLLOWED THREE
GENERAL PRINCIPLES IN ADDITION TO THOSE IN THE PAPERS
PREVIOUSLY PROVIDED THE BONN GROUP.

-- IN PRINCIPLE THE GOVERNING MAYOR SHOULD PERFORM
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THE FUNCTIONS OF BUNDESRAT PRESIDENT OR ACTING
PRESIDENT ONLY WHEN NOT REPEAT NOT PHYSICALLY PRESENT
IN BERLIN. SOME FLEXIBILITY WOULD OF COURSE BE
NECESSARY HERE TO PERMIT CERTAIN ROUTINE LOW-LEVEL
MATTERS TO BE DISPOSED OF WHILE THE GOVERNING MAYOR
WAS IN BERLIN.

-- EVEN WHEN IN THE FRG, THE GOVERNING MAYOR WOULD
TAKE INTO ACCOUNT THE FACTOR OF POLITICAL SENSITIVITY
WHILE ACTING AS BUNDESRAT PRESIDENT OR ACTING FRG
PRESIDENT.

-- THE WAY WOULD BE LEFT OPEN FOR CONSULTATIONS WITH
THE ALLIES ON CONCRETE QUESTIONS WHEN THEY CAME UP.

4. VON BRAUNMUEHL SAID THE FRG'S BASIC VIEW WAS THAT
IT WOULD NOT BE USEFUL TO GO INTO TOO MUCH DETAIL IN
OUTLINING WHAT THE GOVERNING MAYOR SHOULD AND SHOULD
NOT DO IN HIS NEW OFFICE. HE ALSO SAID HE WAS NOT
PRESSING FOR A RESPONSE TO THE FRG'S PAPER BUT MERELY
WANTED TO KNOW IF THE OTHER MEMBERS OF THE GROUP SHARED
THE VIEWS HE HAD OUTLINED.

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5. THE US REP BRIEFLY REVIEWED AGAIN THE VIEWS
EXPRESSED BY THE DEPARTMENT (REF B). HE SAID THAT,
AS DISCUSSED AT THE MAY 2 BONN GROUP MEETING, THERE WAS
A DISTINCTION BETWEEN STOBBE AS PASSIVE ACTING FRG
PRESIDENT, I.E. HOLDING THE OFFICE DURING SCHEEL'S
ABSENCE BUT NOT ACTUALLY DOING ANYTHING, AND AS
ACTIVE ACTING FRG PRESIDENT, I.E. PERFORMING DUTIES
CONNECTED WITH THE OFFICE. WITH RESPECT TO THE ROLE AS
PASSIVE PRESIDENT, HE SAID IT DID NOT APPEAR TO HIM
THAT STOBBE SHOULD BE REQUIRED TO MOVE TO BONN FOR THE
PERIOD HE IS ACTING PRESIDENT AS HAD BEEN SUGGESTED.
ON THE OTHER HAND, HE EXPRESSED THE VIEW THAT AS
ACTIVE PRESIDENT, STOBBE SHOULD NOT TAKE OFFICIAL
ACTIONS WHILE IN BERLIN, E.G. SIGN LEGISLATION, ETC.

6. THE US REP RECALLED THAT AT THE MAY 2 BONN GROUP
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MEETING, HE HAD SUGGESTED THAT A LIST MIGHT BE USEFULLY DRAWN UP AS TO WHAT IT WAS THAT THE PRESIDENT DID AND DID NOT DO IN ORDER TO DETERMINE WHETHER STOBBE, AS ACTING PRESIDENT, WOULD PERFORM THESE FUNCTIONS. THE FRG REP AT THAT MEETING (VON RICHTHOFEN) SAID THAT THIS WAS TOO PARTICULAR AND SAID A MORE GENERAL LINE SHOULD BE DRAWN. THE US REP RECALLED THAT HE SUGGESTED THAT STOBBE NOT PERFORM, FOR WANT OF A BETTER TERM, PRESIDENTIAL ACTS WITH "LEGAL CONSEQUENCES" WHILE IN BERLIN. VON RICHTHOFEN HAD SAID THAT WAS TOO GENERAL. US REP MADE THE POINT, HOWEVER, THAT IT WAS HIGHLY DESIRABLE TO HAVE AS CLEAR A LINE AS POSSIBLE WITH REGARD TO WHAT IT WAS STOBBE AS ACTING PRESIDENT WAS TO DO AND NOT DO. THE US REP RECALLED HIS STATEMENT, MADE ON INSTRUCTIONS, AFTER MINISTER OF INTERIOR MAIHOFFER HAD PERFORMED AN OFFICIAL ACT IN BERLIN (REF C). HE SAID THAT SINCE THE US EXPRESSED CONCERN ABOUT THIS ACT BY MAIHOFFER, IT WOULD PRESUMABLY OPPOSE SIMILAR ACTS BY THE ACTING PRESIDENT.

7. VON BRAUNMUEHL AGAIN NOTED THE INADVISABILITY OF GUIDANCE WHICH WAS TOO DETAILED. HE SAID THAT STOBBE UNDERSTOOD THE IMPORTANCE OF THE ISSUES INVOLVED AND HOPED THAT THE GOVERNING MAYOR COULD BE LEFT SOME FLEXIBILITY. THE BERLIN REP (MEICHSNER) SAID THAT IT WAS DANGEROUS TO CAST NEW FORMULATIONS, SUCH AS "LEGAL CONSEQUENCES," SINCE THESE COULD RESULT IN A NEW AND MORE RESTRICTIVE INTERPRETATION OF THE QA. THE US REP AGREED THAT IT MIGHT BE IMPOSSIBLE TO FORESEE EVERY POSSIBLE PROBLEM AND TO DEVELOP CORRESPONDING GUIDELINES. NOR WAS HE SUGGESTING THAT WE ADD AN INTERPRETIVE GLOSS TO THE QA; SPECIFICALLY ON THAT POINT HE NOTED THAT THE INSTRUCTED STATEMENT ON THE CONFIDENTIAL

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MAIHOFFER VISIT WENT ONLY TO THE QUESTION OF POLITICAL OPPORTUNENESS, NOT THE LEGALITY OF HIS ACTION. THE FORMULATION HE SUGGESTED WAS ONLY A TENTATIVE ATTEMPT TO FIND A FORMULATION WHICH WOULD DRAW A CLEAR DIVIDING LINE FOR INTERNAL FRG AND ALLIED USE.

8. THE UK REP (EYERS) AGREED THAT PRECISE FORMULATIONS ON THIS SUBJECT WERE ALMOST IMPOSSIBLE. HE ASSUMED--FROM WHAT THE FRG AND THE GOVERNING MAYOR HAVE PREVIOUSLY SAID--THAT WHEN QUESTIONS ARISE DURING THE STOBBE PRESIDENCY THE GERMANS WILL SEEK ALL AVAILABLE HELP IN DEALING WITH THEM. HE HAD, HE SAID, NO

DOUBTS ABOUT MAYOR STOBBE'S GOOD FAITH IN THIS MATTER,
NOR WAS HE WORRIED THAT THE GOVERNING MAYOR WOULD
TREAT THE PROBLEMS INVOLVED IN A CAVALIER OR
INSENSITIVE FASHION.

9. EYERS SAID, HOWEVER, HE WOULD LIKE TO BE SURE
THAT A MAN AS BUSY AS MAYOR STOBBE WAS WOULD GET THE
RIGHT HELP IN IDENTIFYING POTENTIAL PROBLEMS FAR
ENOUGH AHEAD OF TIME TO MEET THEM EFFECTIVELY. THE
SOVIETS HAVE IN THE PAST GENERALLY NOT WORRIED ABOUT
NONPUBLIC ACTS OF GOVERNMENT OFFICIALS BUT HAVE
REACTED MOST STRONGLY TO HIGHLY VISIBLE, PUBLIC ACTIONS.
IT WAS THE POTENTIAL FOR CONFLICT OVER THESE PUBLIC
ACTIONS THAT CONCERNED HIM MOST.

10. AS HE HAD BEFORE, EYERS ASKED ABOUT FRG DRAFT
LANGUAGE IN THE FRG PAPERS WHICH SAID THE GOVERNING
MAYOR WOULD PERFORM HIS OFFICIAL FUNCTIONS AS BUNDESRAT
PRESIDENT "AS FAR AS AT ALL POSSIBLE" (SOWEIT WIE
IRGEND MOEGLICH) IN BONN. VON BRAUNMUEHL ASSURED HIM
THAT THIS WAS INTENDED TO MEAN "AS A NORMAL RULE."

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11. REGARDING STOBBE'S ACTIONS AS GOVERNING MAYOR WHILE HE WAS BUNDESRAT PRESIDENT, EYERS ACCEPTED THE GERMAN ARGUMENTS THAT IT WAS NOT NECESSARY FOR AN ACTING GOVERNING MAYOR TO BE APPOINTED WHILE STOBBE IS ACTING FRG PRESIDENT. HOWEVER, THERE SHOULD BE IN PUBLIC A VISIBLE SEPARATION BETWEEN THE TWO FUNCTIONS AND IT WAS IMPORTANT FOR THE GOVERNING MAYOR NOT TO FIND HIMSELF HAVING TO SIGN SENSITIVE LAWS (E.G. WHICH COULD NOT BE EXTENDED TO BERLIN, SUCH AS DEFENSE BILLS) IN HIS NEW OFFICE.

12. THE BONN GROUP AGAIN BRIEFLY DISCUSSED THE SUBJECT ON MAY 18, IN PREPARATION FOR THE SENIOR LEVEL MEETING AT THE NATO MINISTERIAL. VON BRAUNMUEHL SAID THAT THE SECOND OF THE PROPOSED NEW "GENERAL PRINCIPLES" SHOULD BE UNDERSTOOD TO MEET THE UK POINT, E.G. THAT STOBBE AS CONFIDENTIAL

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ACTING PRESIDENT SHOULD NOT SIGN LEGISLATION (E.G. DEFENSE BILLS) WHICH CANNOT BE EXTENDED TO BERLIN. HE AGAIN ASKED THAT THE ALLIED BONN GROUP REPS AGREE THAT THE GENERAL PRINCIPLES COMBINED WITH THE PAPERS ALREADY PROVIDED SHOULD BE REGARDED AS SUFFICIENT GUIDANCE FOR STOBBE'S FUNCTIONS IN HIS NEW OFFICE.

13. EYERS SAID THAT HE WAS PREPARED TO DO SO, AS DID THE FRENCH REP (GAUSSOT), PROVIDED THAT THIS WAS SEEN AS THE MINIMUM THAT THE ALLIES WANT. THE US REP SAID THAT THERE WAS STILL SOME QUESTION IN HIS MIND AS TO WHETHER A MORE THOROUGH STUDY MIGHT BE USEFUL. THE BASIS OF THAT QUESTION IS THAT THE ALLIES DO NOT KNOW ENOUGH ABOUT WHAT DUTIES THE FEDERAL PRESIDENT OR THE BUNDESRAT PRESIDENT HAVE. HE SAID THAT STOBBE IS AN EMINENTLY REASONABLE AND SENSIBLE MAN AND THAT NONE OF US WOULD SUGGEST THAT HE WOULD INTENTIONALLY DO SOMETHING FOR THE PURPOSE OF ANNOYING THE SOVIETS. HOWEVER, AS EYERS HAD EARLIER POINTED OUT, STOBBE IS A BUSY MAN AND MATTERS WHICH ARE OTHERWISE ROUTINE FOR THE FEDERAL PRESIDENT MIGHT BE PASSED THROUGH TO HIM FOR ACTION WITHOUT IT BEING NOTED THAT THERE COULD BE POLITICAL DIFFICULTIES.

14. US REPSAID THE PAPERS PROVIDED US STATE THAT ALL OFFICIAL DOCUMENTS HE SIGNS AS BUNDESRAT PRESIDENT WILL CARRY A DATELINE OF BONN AND THAT HE WILL CARRY OUT HIS FUNCTIONS IN BONN "AS FAR AS POSSIBLE." THEY ALSO SAY THAT, AS ACTING PRESIDENT, HE WILL DO NOTHING IN BERLIN WHICH THE PRESIDENT DOES NOT DO. HE INQUIRED WHETHER IT MIGHT BE POSSIBLE THAT STOBBE

WOULD SIGN SOMETHING IN BERLIN WHICH, ALTHOUGH
DATELINED BONN, CARRIED A DATE OF SIGNATURE WHEN HE
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COULD HAVE BEEN ONLY IN BERLIN.

15. THE US REP RECALLED THAT AN UNDERSTANDING HAD
BEEN REACHED IN 1976 REGARDING THE HANDLING OF THE
LORENZ TRIAL (REF D). THIS UNDERSTANDING WAS FAIRLY
BROAD, ALBEIT WRITTEN, BUT THE ALLIES THOUGHT THAT IT
WOULD PREVENT DIFFICULTIES. AS THE EXPERIENCE OF LAST
SUMMER HAD SHOWN, HOWEVER, IT DID NOT AND WHEN THE MATTER
HAD BEEN RAISED IN THE BONN GROUP, THE VIEW OF THE FRG BONN
GROUP REP HAD BEEN THAT THE UNDERSTANDING HAD NOT
BEEN VIOLATED, IT WAS SIMPLY NOT "WATERTIGHT."
(PARAGRAPH 7 OF REF E). THE US REP SAID IT MIGHT STILL
BE USEFUL, FOR STOBBE'S BENEFIT, TO HAVE A CLEAR IDEA
OF WHAT HE MIGHT DO AND NOT DO.

16. VON BRAUNMUEHL SAID HE APPRECIATED THE PROBLEM
BUT DID NOT BELIEVE THAT AN EXTENSIVE LIST WAS
DESIRABLE. EVEN IF WE LISTED 100 ITEMS, THERE COULD
BE THE 101ST WHICH CAUSED PROBLEMS. SUCH AN
EXTENSIVE LIST WOULD PROVIDE A FALSE SENSE OF SECURITY
AND THERE WOULD BE LESS OF A TENDENCY TO VET UNFORESEEN
SPECIFIC QUESTIONS IN THE BONN GROUP. WITH REFERENCE
TO THE SPECIFIC QUESTION OF SIGNING LEGISLATION, HE
SAID THE FRG PRESIDENT DOES NOT SIGN BILLS IN BERLIN
AND STOBBE WOULD THEREFORE NOT DO SO. THE US REP
SAID THAT HE FOUND VON BRAUNMUEHL'S POINTS VALID
ONES AGREED WITH THE CONSENSUS THAT THE GUIDE-
LINES PREPARED THUS FAR SEEM TO PROVIDE THE BEST
PRACTICAL SOLUTION.

17. COMMENT: THE FOREGOING, AS WELL AS THE INFORMAL
TRANSLATIONS OF THE PAPERS PROVIDED US IN THE BONN
GROUP, ARE TRANSMITTED AT THIS TIME IN ORDER TO
PROVIDE AN UP-TO-DATE BACKGROUND FOR THE DISCUSSION

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AT THE SENIOR LEVEL MEETING. AT THIS POINT, WE BELIEVE THAT THE BONN GROUP HAS RATHER THOROUGHLY DISCUSSED THE ISSUE AND THAT THE FRG HAS DONE WHAT IT REASONABLY CAN TO AVOID POTENTIAL DIFFICULTIES IN CONNECTION WITH THE STOBBE ASSUMPTION OF THE BUNDES RAT PRESIDENCY. WE THEREFORE ASSOCIATE OURSELVES WITH THE CONSENSUS IN THE BONN GROUP THAT, PROVIDED THE GUIDELINES THE FOREIGN OFFICE HAS PREPARED ARE FOLLOWED, UNNECESSARY PROBLEMS WILL BE AVOIDED.

18. ONE POINT WORTH NOTING FOR THE RECORD IS THAT, WHILE WE HAVE USED THE SHORT-HAND EXPRESSION "ACTING FEDERAL PRESIDENT," AS DID THE FOREIGN OFFICE IN ITS PAPER, THAT TERM IS TECHNICALLY IMPRECISE. THE BASIC LAW DOES NOT PROVIDE FOR AN "ACTING PRESIDENT" BUT SIMPLY STATES THAT "IF THE FEDERAL PRESIDENT IS PREVENTED FROM ACTING,...HIS POWERS SHALL BE EXERCISED
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BY THE PRESIDENT OF THE BUNDES RAT." WHEN THE LATTER DOES SO, HE SIGNS DOCUMENTS NOT AS "ACTING PRESIDENT" BUT WITH THE FORMULATION: "FOR THE FEDERAL PRESIDENT,"

USING HIS OWN TITLE AS PRESIDENT OF THE BUNDES RAT.
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